



UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
www.uspto.gov

Paper No. 21

COLIN G SANDERCOCK
FOLEY & LARDNER
3000 K ST NW
STE 500
WASHINGTON DC 20007-5109

COPY MAILED

DEC 14 2001

OFFICE OF PETITIONS

In re Application of
Kenneth L. Beattie
Application No. 09/063,356
Filed: April 21, 1998
Attorney Docket No. 029623/0109

DECISION ON PETITION

This is a decision on the petition filed September 10, 2001, pursuant to 37 CFR 1.137(b), to revive the above-identified application.

The petition is **GRANTED**.

The above-identified application became abandoned as a result of petitioner's failure to timely file an Appeal Brief (and fee) within the time period provided in 37 CFR 1.192(a). A final Office action was mailed on April 14, 2000, which set a shortened statutory period for reply of three (3) months. Petitioner obtained a three month extension of time and replied with an Amendment and a Notice of Appeal on October 16, 2000.¹ However, by Advisory Action mailed November 9, 2000, the examiner informed petitioner that the Amendment would not be entered. Accordingly, the two month period of time (extendable under 37 CFR 1.136(a)) for filing the Appeal Brief started to run from October 16, 2000. On February 16, 2001, petitioner obtained an additional two month extension of time and filed another Amendment. However, the Amendment was not entered because it did not place the application in condition for allowance. No Appeal Brief having been filed and no further extensions of time having been received, the above-identified application became abandoned on February 17, 2001. A Notice of Abandonment was mailed on September 7, 2001.

With the instant petition, the petitioner filed a request for a continued prosecution application (CPA) of the above-identified application under 37 CFR 1.53(d), and met all other requirements for a grantable petition under 37 CFR 1.137(b). The above-identified application is being revived solely for purposes of reviving the application, the application is again abandoned in favor of the CPA, filed September 10, 2001.

It is not apparent whether the person signing the statement of unintentional delay was in a position to have firsthand or direct knowledge of the facts and circumstances of the delay at issue. Nevertheless, such statement is being treated as having been made as the result of a reasonable inquiry into the facts and

¹ The reply was timely because October 14th and 15th fell on Saturday and Sunday, respectively.

circumstances of such delay.² In the event that such an inquiry has not been made, petitioner must make such an inquiry. If such inquiry results in the discovery that it is not correct that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional, petitioner must notify the Office.

There is no indication that the person signing the instant petition was ever given a power of attorney or authorization of agent to prosecute the above-identified application. If the person signing the instant petition desires to receive future correspondence regarding this application, the appropriate power of attorney or authorization of agent must be submitted. While a courtesy copy of this decision is being mailed to the person signing the instant petition, all future correspondence will be directed to the address of currently of record until such time as appropriate instructions are received to the contrary.

The application file is being forwarded to Technology Center 1600 for processing of the CPA.

Telephone inquiries regarding this decision should be directed to Petitions Attorney Cliff Congo at (703) 305-0272.

Christina Partera Donnell for

Beverly M. Flanagan
Supervisory Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

cc: Brian Jones
Blank, Rome, Comisky & McCauley LLP
900 17th Street, N.W.
Suite 1000
Washington, D.C. 20006

² See 37 CFR 10.18(b) and Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. 53131, 53178 (October 10, 1997), 1203 Off. Gaz. Pat. Office 63, 103 (October 21, 1997).